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TRA Communications Consultants, Inc.

— EXECUTIVE OFFICES —

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Re: Comments for GN Docket No. 96-113
Original plus ten copies

Dear Mr. Caton:

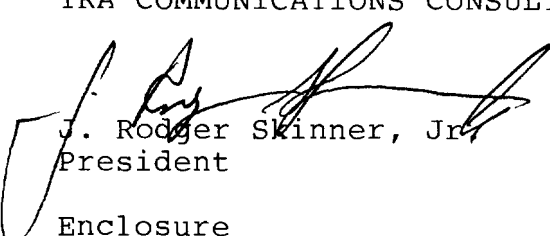
Enclosed herewith is an original and ten copies of Comments in the above referenced proceeding filed on behalf of TRA Communications Consultants, Inc. and myself.

These comments are in response to FCC No. 96-216 Notice of Inquiry in the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses.

One copy of these comments has also been sent to the Commission's copy contractor, International Transcription services at Room 246, 1919 M Street, N.W., Washington, D.C. 20554.

Respectfully submitted,

TRA COMMUNICATIONS CONSULTANTS, INC.


J. Rodger Skinner, Jr.
President

Enclosure

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

**RECEIVED
AUG 23 1996
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In the Matter of:

**Section 257 Proceeding to Identify and
Eliminate Market Entry Barriers for
Small Businesses**

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GN Docket No. 96-113

To: The Commission

**Comments of TRA Communications Consultants, Inc.
and J. Rodger Skinner, Jr.**

The broadcast consulting firm of TRA Communications Consultants, Inc. ("TRA") and its sole owner, J. Rodger Skinner, Jr. herein file comments concerning the above noted Notice of Inquiry. TRA has been in the business of preparing FCC applications for new and modified Low Power Television stations since 1980 and Mr. Skinner owns three Low Power Television stations. In addition, I have worked for numerous radio stations, since 1963, in programming, engineering and sales prior to starting my own business. As an entrepreneur, I founded Tunnel Radio of America, Inc. in 1976 and developed a new form of broadcasting inside vehicular tunnels, on all AM frequencies, simultaneously. I sought and received approval from the full five-member Commission for this new type of station, which resulted in an amendment to Part 15 of the FCC rules¹. I participated in the FCC rulemaking that established the Low Power Television service and am presently working with the Community Broadcasters Association to try to save that service from being decimated by the current digital-channel allotment table put forth by the Commission. My local Fort Lauderdale, FL LPTV station, which I first applied for in 1980 and built in 1988 after waiting eight years for FCC approval, will be displaced under this proceeding. The above background is given to show that I am one of the small business entities referred to in Section 257. I have been struggling for over thirty years towards the goal of owning my own radio station and am still reaching for that goal. It is from this perspective that I wish to present these comments and make a suggestion that could go a long way towards helping the FCC meet its requirements under Section 257².

¹47 U.S.C. Section 15.211 Tunnel Radio Systems

²47 U.S.C. Section 257

In these comments I will seek to point out ,both from personal experience and observations, the many barriers to entry that preclude ownership of telecommunications facilities, primarily radio and television stations, by small business entities, women and minorities. I will show that the definitions used by the FCC and the Small Business Administration (SBA) to define “small business”, used in recent spectrum auctions, need to be reviewed and adjusted. These definitions themselves serve as barriers to entry for small business by allowing larger businesses to outbid small business entities. Indeed, what the FCC refers to as small business, I would consider very big business. In these comments, I will use the term “micro-business” to refer to the size of businesses and individuals now barred from entry into the field of broadcasting.

1. Under Section 257, the Commission is charged with both identifying and eliminating, by regulations pursuant to its authority under this Act, market entry barriers for entrepreneurs and other small businesses seeking ownership of telecommunications and information services. As someone who has sought for over thirty years to own his own radio station, I am uniquely aware of the entry barriers. Those barriers still prevent me from obtaining my goal of radio station ownership. Although I have achieved ownership of some Low Power Television (LPTV) stations, with their lower entry barriers, I am now watching those stations be put out of business by the digital television proceeding. Since 1980 we in the LPTV industry struggled to try to get mandatory cable-carriage that the full-power TV stations enjoy. The National Association of Broadcasters (NAB), which I thought would welcome us as fellow broadcasters, turned out to be our worst enemy and indeed lobbied diligently to block LPTV progress on every front³. I mention this because I think one can draw a parallel to their lobbying efforts to keep the status quo, which is a very high barrier to entry to radio and television licenses across America. The main barrier to entry into broadcasting today is a financial one. Here in my hometown area (Fort Lauderdale, FL), it is impossible to purchase a FM radio station for under \$20 million and recently, after passage of the Telecommunications Act of 1996 which increased the number of stations one can own in the same market, prices have been forced even higher with FM stations now commanding prices in excess of \$50 million. Even the lowest priced AM station (1 kw) sold recently for over \$1 million. Thus it is easy to see why the micro-business or individual is priced out of the market.

2. One might suggest applying for a new station license. There are none available in my area, and even if there were, the legal/engineering costs would be prohibitive. The monied applicants can keep appealing the case to higher levels running up the legal bills , until the small business applicants run out of money and jump at their settlement offer. As they say, been there - done it!

³This can be substantiated upon request.

Or rather, had it done to me a few years back in a Cape Coral, FL Class-A FM application. The two applicants that remained to fight it out each ran up legal bills of over \$200,000 over a period of several years. With one unable to afford to buy an existing station and no new frequencies available to apply for (even if one could afford it), it is easy to see the barrier to entry here resembles the Berlin Wall of old. Oh yes, I could move my family (unwillingly) to Podunk, Idaho or some very small market where the barrier to entry would be lower, but that's not an option for me at least. The Tunnel Radio station that I started in 1976 in Fort Lauderdale, FL proved to be unprofitable and was eventually shut down, not due to trying but rather by a slow loss of advertisers. This was due to the fact that their ads could only be heard by motorists traveling through the tunnel, thus not giving them adequate reach and frequency. It was born out of my frustration in trying to own a radio station.

3. The Notice of Inquiry, in paragraph 3 of the introduction, asks how to define small businesses for the purpose of implementing Section 257. A more realistic definition will solve half the problem. I will address how to solve the other half of the problem later in these comments. The FCC⁴ erred previously when it adopted the SBA's definition of \$6 million net worth and less than \$2 million in annual profits for each of the two previous years. This is far too high and not my idea of small business. Anyone with that kind of financial strength, does not need the FCC to implement rules to aid them. Having operated small businesses for twenty years, I have never approached that level of profits and certainly cannot claim anywhere near that high of net worth. I would doubt seriously that any LPTV station owner would exceed those figures listed above. I believe a much more realistic definition of small business or as I prefer to call it micro-business, would be a net worth of under \$1 million and annual profits of under \$500,000. These figures would be workable under the plan I outline herein. This will keep the bigger companies from grabbing the opportunities away from the micro-sized businesses and individuals (like myself) and give us the break we deserve. These levels could even be lower but I believe the \$1 million/\$500,000 definition will serve the desired purpose, without punishing those who have achieved some modicum of success. Close scrutiny must also be paid to the ways in which larger businesses would try to circumvent these limits. The old tricks of the monied owner putting up a small business front person as the majority stockholder (non-voting stock), while he/she holds the majority of the voting stock, among other tricks need to be thwarted. These sham deals must be prevented from making a mockery of the intent of Section 257. One possible solution might be to attribute ownership to anyone holding any percentage of stock in the business, voting or non-voting, with the applicants signing a "real party in interest" statement as part of the application, as is now included in the FCC Form 346 LPTV application.

⁴Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2395-2396 (1994) (Competitive Bidding Second Report and Order).

4. The Notice of Inquiry devotes much attention to the opportunities for women and minority applicants, and with the rules that have been in effect, this is understandable. By lowering the definition (financial limits) of small business to micro-business, as outlined above, it may not be necessary to apply any other incentives for women and minorities, thus staying clear of any possible constitutional questions that arose from the Supreme Court's decision in Adarand Constructors, Inc. v. Peña⁵, which held that racial classifications are subject to strict scrutiny. Those designated entities and/or individuals that could certify that they met the above stated financial limits should be entitled to a substantial preference in an auction or lottery or any other method of awarding licenses. By substantial, I mean precisely that, for instance at least a 100X multiplier applied to the auction bid of a small business applicant. Anything less would contradict the entire purpose of Section 257 and allow large companies to walk away with all the channels, just like before. The incentive given the micro-business applicant must be so high as to discourage application by non-qualifying entities by making the price higher than the market value of the license, thus not a good bargain for them, while being within reach of small business, women or minority applicants using their preference. The FCC's mandate under Section 309(j) and Section 257 are perfectly clear in this regard. While the NAB and other interests will argue for a lower preference for small business, women and minorities, the FCC must hold fast to the principles involved in this Notice of Inquiry. The concept is worth repeating - the incentive given the small business (micro-business) applicant must be high enough to make the price not a good bargain for the large companies, since they can easily outbid the small entities by even a larger margin. They will not outbid the smaller entities only when it becomes financially unwise to bid that much for a particular license. If a lottery selection method were chosen, the small business applicant should again receive a substantial advantage of winning, possibly by weighting his/her application with at least a 10X preference factor over non-qualifying applicants and weighted evenly against other qualifying applicants. Preferences should also be given to those who do not own any full-service radio or television stations (excluding LPTV stations which are a secondary service) . Again, I do not believe any other preference is necessary for either women or minorities or non-commercial entities under this plan, since the barrier to entry is being lowered by such a magnitude. Since the cost of construction of the stations, outlined later in these comments, are much lower, the seed money needed could be obtained from traditional sources such as relatives, friends or SBA guaranteed bank loans. Raising larger sums of capital can be very difficult for small businesses. As an example, after I borrowed on a business contract to build my first LPTV station, I approached my local banker where I had banked for several years to seek a loan to buy equipment to build my second LPTV station. His

⁵115 S. Ct. 2097 (1995)

message to me after turning me down was “We make loans mainly for bricks and mortar (buildings/real estate) and wouldn’t want your broadcast equipment as collateral”. It is very difficult or impossible for the small business entity to acquire financing unless they have over 40% of their own money for the project or have sufficient collateral. Some leasing companies will work with a small business, but the interest rate is much higher than that available to larger concerns. If the small business person tries to team up with a monied partner, he/she ends up with a very small percentage of the station and I have heard many horror stories of partnership squabbles which I choose not to relate here.

5. If the Commission is serious about promoting diversity of ownership of broadcast stations, as mandated under Section 257, then adopt the 100X auction preference combined with a ten-year payout, with interest only the first two years (if desired), with the interest rate equal to the equivalent treasury-bill rate at that time.

6. To what services should these auction preferences apply? In answering this question, one must consider in which endeavor the small business person has the highest chance of success. If it is a venture that requires a large plant buildout or very high operating expenses, the small business would be doomed to fail even if they could acquire the FCC license. Although there may be others, I wish to propose herein a service that would be treasured by the small business person, a great service to the community and one that the small business person still could survive in today. That is Low Power FM (LPFM) radio broadcasting.

7. In the very near future, I will be filing a Petition for Rulemaking with the Commission requesting the creation of a Low Power FM service similar to the Low Power Television service that was created back in 1980. There are a few channels in each city where Low Power FM stations, with a broadcast radius of about ten miles, could be dropped in on unused second and third adjacent channels, without causing interference to existing FM stations. The average Low Power FM station can be built using FCC type-accepted equipment for less than the price of a new car. There is no cable company standing between the station and its listeners as in LPTV so LPFM could be profitable by serving the local community, within a ten mile radius. The “mom and pop” radio station could cater to other small businesses in their community by offering lower rates than the other stations covering a larger area. The idea of hundreds or thousands of new voices coming on the air all across America is exciting to say the least. Implementation of Low Power FM could go a long way towards leveling the playing field in the broadcast industry for the small business and help the FCC meet its mandate under Section 257, Section 309(j) and Section 307(b). It would clearly be in the public interest.

7. Although I expect the NAB and some existing stations to oppose this plan, the fact is that there is room for LPFM both on the dial and in the marketplace. Many of the existing LPTV rules could be modified and adopted to the LPFM service so most of the work has already been done and those working rules tested. To those who would attempt to argue that it would be too much competition, and result in existing stations being forced off the air, we heard the same arguments against LPTV. I don't know of one full-power TV station that was forced out of business by a LPTV signing on. In my view the NAB should welcome LPFM, since they know the level of competition will be small as opposed to full-service facilities trying to usurp the same channels, which could present real competition.

8. LPFM could be a win-win situation for everyone concerned. The small business applicant who for the first time can have an on the air voice would benefit. The community as a whole would benefit from a diversity of voices and local station owners who are more tuned into local community needs, as opposed to large corporate station owners in distant cities. Other small businesses would benefit by now being able to afford to advertise on radio since, the coverage area of the LPFM station more closely matches their trading area. The FCC could point with pride to a workable answer to their Section 257 obligations. Ownership limits of perhaps ten LPFMs should be established to prevent some parties from taking unfair advantage of the preferences. This could be an exciting time for broadcasting in America, giving opportunities to many who have been locked out of the system for a lifetime.

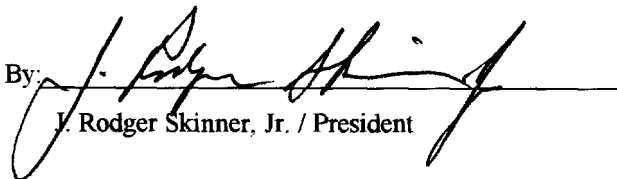
9. I plan to go into great detail on this plan when I file the Petition for Rulemaking soon at the FCC. In the meantime, I am setting up a website on the World Wide Web on which I plan to outline the details of the Petition for Rulemaking, once filed, and receive input from interested parties. The website, which is under construction, will be located at the following address:

<http://www.lowpowerfm.com>

With the help of a lot of individuals and the Commission, I would hope this LPFM proposal would receive the fast-track toward approval and implementation. It certainly fulfills the statutory obligations of the Commission and clearly satisfies the public interest, convenience and necessity.

Respectfully submitted,

TRA Communications Consultants, Inc.

By: 
J. Rodger Skinner, Jr. / President

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August 22, 1996